

**SUMMARY OF THE DRAFT BYLAWS OF OPEN MUSIC INITIATIVE, INC.**

*This document contains a high-level summary of the proposed draft bylaws (the “Proposed Bylaws”) of Open Music Initiative, Inc., a Massachusetts non-profit corporation. This document is **not a complete summary** of the Proposed Bylaws and does not contain every provision of the Proposed Bylaws. Please also consult the full draft of the Proposed Bylaws to review the proposed provisions in full. The parentheticals following each bulleted item in this summary are the section reference for the corresponding section in the full Proposed Bylaws.*

**DEFINITIONS**

- **“Affiliate”** means any entity that is controlled by, under common control with, or that controls the subject party. “Control” means (1) having more than 50% of the voting power to elect directors (for a corporation) or (2) the power to direct management (for any other entity). (1.1)
- **“Corporation”** means Open Music Initiative, Inc. (1.2)
- **“Donor”** means any Member that donates or pays as membership dues at least US\$100,000 to the Corporation in the then-current Fiscal Year. (1.3)
- **“Executive Director”** means the Executive Director and President of the Corporation. The Executive Director shall not be a member of the Board of Directors. (1.4)
- **“Intellectual Property Policy”** or **“IP Policy”** means the Corporation’s Intellectual Property Policy. (1.5)
- **“Member”** or **“Members”** means any or all Record Label Members, Artist Members, Performance Rights Society Members, Music Publisher Members, Music Streaming Service Members, Music Technology Supplier Members, General Technology Supplier Members, Entrepreneur Members, Miscellaneous Members. Member shall not mean a “member” as that term is used in Chapter 180 of the Massachusetts General Laws (“M.G.L.”). The only “member” of the Corporation for purposes of Massachusetts state law and the rights granted thereunder is Berklee College of Music, Inc. (1.6)

**PRINCIPAL OFFICE; FISCAL YEAR**

- **Principal Office:** The principal office of the Corporation will be located at the place set forth in the Corporation’s Articles of Organization. (2.1)
- **Other Offices:** The Corporation may also have offices in other places where it is qualified to do business, if the Board of Directors chooses. (2.2)
- **Fiscal Year:** The Corporation’s fiscal year will end on May 31st in each year. (2.3)

**ARTICLES OF ORGANIZATION; PURPOSES; COMPLIANCE WITH ANTITRUST LAW**

- **Articles of Organization:** The name and purposes of the Corporation will be set forth in the Articles of Organization, which will be the foundational document concerning the conduct and regulation of the Corporation and its Members and Directors. (3.1)

- **Internal Revenue Code 501(c)(6) Purposes:** The Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(6) of the Internal Revenue Code of 1986. (3.2)
- **Compliance with Antitrust Laws:** Members and their representatives agree not to violate any applicable state, federal or international antitrust laws, regulations or orders. Each Member must provide legal counsel to its representatives participating in the activities of the Corporation regarding the importance of limiting the scope of their discussions (formal or informal) to topics that relate to the purposes of the Corporation. (3.3)

#### **SOLE STATUTORY MEMBER**

- **Designation of Sole Statutory Member:** Berklee College of Music, Inc. shall be the sole “member” of the Corporation as such term is used in M.G.L. Chapter 180 (the “Statutory Member”). Members other than the Statutory Member will have only those rights and responsibilities as explicitly set forth in the Bylaws. (4.1)
- **Powers and Rights:** The Statutory Member has the powers and rights set forth in M.G.L. Chapter 180, the Articles of Organization of the Corporation and the Bylaws. (4.2)
- **Statutory Member Meetings; Action Without a Meeting:** Meetings of the Statutory Member may be held within or outside of Massachusetts. There will be an annual meeting of the Statutory Member, which will be held at a date, time and place designated by the Statutory Member. Any action which may be taken at a meeting of the Statutory Member may be taken without a meeting if a consent is given in writing. (4.3)

#### **MEMBERSHIP AND PARTICIPATION PROVISIONS**

- **Determination and Rights of Members:** The Corporation shall have classes of membership (“Membership Classifications”). Members have various rights and benefits, including the right to attend meetings of the general Members of the Corporation and to approve, adopt and/or publish standards, specifications, publications, tools, metrics, or other formal policy positions of the Corporation (“Formal Corporation Policy”) (5.1)
- **Qualifications for Participation:** Any company or individual supportive of the Corporation’s purposes that pays annual dues qualifies for Membership, as long as they agree to the Bylaws, Membership Agreement and the Corporation’s IP Policy. However, any entity that is an Affiliate of a Member and any individual that is an employee, agent, director or officer of a Member or its Affiliate may not be a Member. (5.2)
- **Fees and Dues:** Member will pay annual dues to the Corporation. The Board of Directors will set the annual dues. The annual dues may vary based on the size and/or status of the Member, or other factors as determined by the Board of Directors. (5.3)
- **Number of Members:** There is no limit on the number of Members. (5.4)
- **Nontransferability of Membership Agreements:** Membership Agreement may not be assigned without the prior written consent of the Corporation. (5.5)
- **Termination of Membership:** The Membership Agreement of a Member shall terminate upon the occurrence of any of the following events (5.6):
  - *Non-payment of dues:* Upon failure to pay dues within 30 days of being notified of delinquency.

- *Resignation:* Upon 15 days' written notice from the Member.
- *Violation:* Upon unanimous vote of all disinterested Directors who determine that the Member has violated the policies, procedures, and duties of the Corporation.
- *Dissolution or Death:* Upon dissolution or death of the Member.
- *Combination, change of affiliation:* Members who combine (e.g. through merger or acquisition) or change affiliation (e.g. through change of employment or control) shall inform the Corporation as to which Membership Agreement shall be the sole survivor. Upon completion of the combination, any non-surviving Membership Agreement will automatically terminate.

## MEETINGS OF MEMBERS

- **Meetings of Members (6.1):**
  - *Annual Meeting.* The annual meeting of the Members will be held on the second Thursday in March for the purpose of electing Directors, receiving management, Board and Steering Committee reports, and for any other business that may arise.
  - *Regular Meetings.* Other regular meetings of the Members will be held on the second Thursday of June, September and December for the purpose of receiving management, Board and Steering Committee reports, and for any other business that may arise.
  - *Special Meetings.* Special meetings may be called by the Chair, Vice-Chair, Executive Director, Board of Directors, Statutory Member or by written request of at least ten Members.
- **Call for Meetings of Members:** For the annual meeting, Members shall be provided with at least 30 days' notice. For regular or special meetings, Members shall be provided with at least 10 days' notice. (6.2)
- **Quorum for Meetings:** At least 10 percent of the Members from a majority of the Membership Classifications must be in attendance (in person or by proxy) at a meeting to constitute a quorum. (6.3)
- **Representatives; Proxies:** Each Member that is not an individual may designate a primary representative and an alternate for the representative in accordance with the Bylaws. Members may vote either in person through their primary or alternate representatives or by written proxy dated not more than six months before the meeting for which they are voting by proxy. (6.4)
- **Conduct of Meetings:** Meetings of Members shall generally be presided over by the Chair of the Board. Meetings shall be governed by procedures established by the Board of Directors. Members may participate in meetings via phone. (6.5)
- **Voting; Approval of Formal Corporation Policy:** A Member is entitled to vote at the first three meetings occurring on or after the date the Member became a Member. Thereafter, the Member is entitled to vote only if the Member has attended two of the preceding three meetings. Except as provided for in the Bylaws, all votes of Members are advisory in nature only. However, Members shall bind the Corporation when they vote to approve Formal Corporation Policy in accordance with the procedures set forth in the Bylaws. (6.6)

## MEMBERSHIP CLASSIFICATIONS

- **Generally:** Each new Member shall choose a Membership Classification whose scope most closely corresponds to the Member's primary activities. (7.1)
- **Record Label Members:** Aggregators, holders and licensors of recording rights. (7.2)
  - There will also be a subset of Record Label Members known as the "Major Record Label Members." Universal Music Group, Sony Music Entertainment and Warner Music Group shall each be a Major Record Label Member so long as they qualify as a Member of the Corporation. The Major Record Label Members will have the additional right to nominate and vote to elect the Major Record Label Member representative to the Board of Directors. (7.2)
- **Artist Members:** Composers, lyricists, and performers of music. (7.3)
- **Performance Right Society Members:** Holders, licensors, and royalty payment processors of performance rights. (7.4)
- **Music Publisher Members:** Holders, licensors, and royalty payment processors of mechanical and synchronization rights. (7.5)
  - There will also a subset of Music Publisher Members known as the "Major Music Publisher Members." Universal Music Publishing Group, Sony/ATV Music Publishing, Warner/Chappell and BMG Music Publishing shall each be a Major Music Publisher Member so long as they qualify as a Member of the Corporation. The Major Music Publisher Members will have the additional right to nominate and vote to elect the Major Music Publisher Member representative to the Board of Directors. (7.5)
- **Music Streaming Service Members:** Providers of on-demand playback services of recorded performances that do not necessarily require the listener to purchase a file for download. (7.6)
- **Music Technology Supplier Members:** Hardware and software producers and related service providers whose products and services focus primarily on the music industry. (7.7)
- **General Technology Supplier Members:** Hardware and software producers and related service providers whose products and services are not limited to use within the music industry. (7.8)
- **Entrepreneur Members:** General or music technology suppliers with less than 100 employees. (7.9)
- **Miscellaneous Members:** Consumers, governments, educational institutions, the Statutory Member, and all others whose primary activities do not correspond with one of the other Membership Classifications. (7.10)

## BOARD OF DIRECTORS

- **Number:** The number of Directors of the Corporation will be fixed at the number of then-existing Member Classifications plus four Directors. (8.1)
- **Powers:** Subject to the provisions of the M.G.L. Chapter 180 and any limitations in the Articles of Organizations and the Bylaws (including the powers of the Statutory Member and the power of the Members to approve Final Corporation Policy), the activities and

affairs of this Corporation shall be conducted under the direction of the Board of Directors, provided that the following rights are subject to approval by the Statutory Member:

- Amending or restating the Articles of Organization of the Corporation;
  - Amending, restating or repealing the Bylaws or adopting new Bylaws;
  - Approving the Corporation's merger or consolidation with another entity;
  - Approving the sale, lease, exchange or other disposition of all, or substantially all, of the assets of the Corporation;
  - Causing or approving the filing of any voluntary petition for bankruptcy of the Corporation or any of its subsidiaries or dissolving the Corporation;
  - Approving the Corporation's annual operating and capital budgets;
  - Approving changes in the Corporation's membership dues;
  - Approving the incurrence of any indebtedness of \$1 million or more in any given Fiscal Year;
  - Appointing outside auditors for the Corporation;
  - Approving the appointment or removal of the Executive Director of the Corporation;
  - Approving the creation, acquisition and/or dissolution of an entity in which the Corporation is proposed to be, or is, the controlling member; and
  - The exercise of any powers by the Corporation, acting in its capacity as direct or indirect member, shareholder or partner of any affiliate, subsidiary or joint venture.
- **Qualifications and Election of Directors:** Each Director must (1) be an employee of the Member appointing or nominating him or her, or (2) must be a Member. There will be one Director appointed by the Statutory Member, who shall serve as the Chair of the Corporation. There will be one Director appointed by MIT, who will serve as the Vice Chair of the Corporation. Each Membership Class and the specified subsets will elect one Director in accordance with the Bylaws. In addition, the Donors will elect one Director in accordance with the Bylaws. (8.3)
  - **Notice, Nomination, and Election of Directors:** After the initial Directors are selected, regular elections of Directors from among the nominees of the Members will occur at the second annual meeting of the Members and continue every year thereafter in accordance with the process set forth in the Bylaws. The Directors representing the Membership Classifications will be divided into two classes with one class initially serving two years and the other class initially serving three years. Thereafter, each class of Directors will serve for two year terms. There will be a Nominating Committee, which will solicit nominations from each Membership Classification and from the Donors for individuals to serve as the Director representing each group. (8.3)
  - **Term of Office:** Each Director will have different terms of office depending on whether the Director represents the Statutory Member (until a replacement is appointed), MIT (until a replacement is appointed), each Membership Classification (two year term), or the Donors (one year term). (8.4)

- **Duties:** The Board of Directors shall perform all duties imposed on it by law, by the Articles of Incorporation, or by the Bylaws. These duties shall be focused on the day-to-day operation and maintenance of the Corporation (8.5)
- **Compensation:** Directors are not compensated. Directors may be reimbursed for reasonable expenses incurred in the performance of their duties. (8.6)
- **Place of Meetings:** Board of Directors' meetings will be held at places and times agreed to by a majority of the Board of Directors. (8.7)
- **Annual Meeting:** An annual meeting of the Board of Directors shall be held as soon as practical following the annual meeting of Members. (8.8)
- **Regular and Special Meetings:** Regular meetings of the Board shall be held on the second Wednesday of each month, though special meetings may be called as well. (8.9)
- **Notice of Meetings:** There will be 10 days' notice to Directors before annual meetings, and at least 3 days' notice to Directors before regular or special meetings. (8.10)
- **Quorum for Meetings:** A quorum of the Board of Directors shall consist of six Directors. (8.11)
- **Board Action and Voting Percentages:** Except as otherwise required, a majority of the vote of the Directors present at a meeting with a quorum will be an act of the Board of Directors. However, there are particular voting thresholds required for certain matters as described in the Bylaws. (8.12)
- **Conduct of Meetings:** Meetings of the Board of Directors shall generally be presided over by the Chair of the Board of Directors. Meetings shall be governed by procedures established by the Board of Directors. Directors may participate in meetings via phone. Directors may not participate in a meeting via proxy. (8.13)
- **Vacancies; Removal; Resignations:** Directors may resign, may be removed by the Board of Directors, or may be removed by a vote of the majority of the Members or Donors that the Director represents. (8.14)
- **Board Action Without a Meeting:** Any action required or permitted to be taken at any meeting of the Directors may be taken without a meeting if all the Directors consent to the action in writing. (8.15)
- **Nominating Committee:** There shall be a Nominating Committee, which shall consist of one representative of each Membership Classification. (8.16)

## OFFICERS

- **Designation of Officers:** The officers of the Corporation shall include an Executive Director/President, a Secretary and a Treasurer. (9.1)
- **Election and Term of Office:** The officers shall be elected by majority vote of the Board of Directors, at each annual meeting of the Board of Directors, and each officer shall hold office until he or she dies, resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whatever occurs first. (9.2)

- **Removal and Resignation:** The Board of Directors may remove any officer from his or her elected office, either with or without cause, at any time upon a vote of two thirds of the Directors present at a meeting duly held at which a quorum is present. (9.3)
- **Vacancies:** Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. (9.4)
- **Duties of Executive Director and President:** The Executive Director and President (the “Executive Director”) shall be the chief executive officer of the Corporation. The Executive Director shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of its officers and employees. (9.5)
- **Duties of Secretary:** The Secretary will perform all duties which may be assigned by the Board of Directors, as well as duties required by law, by the Articles of Organization, and by the Bylaws, such as advising the Members in writing of all results of any election of Directors and officers. (9.6)
- **Duties of Treasurer:** The Treasurer will perform all duties which may be assigned by the Board of Directors, as well as duties required by law, by the Articles of Organization, and by the Bylaws, such as disbursing the funds of the Corporation at the direction of the Board of Directors (9.7).
- **Agents and Employees:** The Board of Directors may appoint and remove agents and employees to perform duties decided by the Board of Directors. (9.8)
- **Compensation:** The Corporation may pay compensation in reasonable amounts to agents and employees. (9.9)

## **STEERING COMMITTEE AND WORKING GROUPS**

- **Steering Committees:** The Corporation shall have steering committees if the Board of Directors votes to establish such a committee (“Steering Committees”). The Corporation anticipates having three initial Steering Committees: the Technical Steering Committee, the Educational Steering Committee and the Implementation Steering Committee. (10.1)
- **Meetings and Actions of Steering Committees:** Any Member may propose to the Board of Directors the establishment of a Steering Committee to carry out the work of the Corporation. Any Member may become a member in any or all Steering Committees. Ten percent of the Members registered with the Corporation as a Steering Committee participant and otherwise entitled to vote in a Steering Committee shall constitute a quorum. All Steering Committees shall elect a secretary or other person to document and record the Steering Committee’s activities. Steering Committees shall hold regular meetings on a schedule as determined by such Steering Committees. The Steering Committee Procedures or other internal policies of the Steering Committees shall govern the removal of any member of a Steering Committee or Working Group. (10.2)
- **Working Groups:** Each Steering Committee may vote to charter subgroups (“Working Groups”). (10.3)
- **Meetings and Action of Working Groups:** The Steering Committee establishing a Working Group shall approve the charter, processes and policies of such Working Group, including electing its Chairperson and its Secretary. Any Member may become a member

in any or all Working Groups. Ten percent of the Members registered with the Corporation as a Working Group participant and otherwise entitled to vote in a Working Group shall constitute a quorum. Working Groups shall hold regular meetings on a schedule as determined by such Working Group and approved by the Steering Committee who chartered it. (10.4)

#### **EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS**

- **Execution of Instruments:** Except as the Directors may authorize, all obligations made, accepted or endorsed by the corporation (e.g. deeds, contracts) shall be signed by the Executive Director or the Treasurer. (11.1)
- **Checks and Notes:** Except as the Directors may authorize or as required by law, evidence of indebtedness of the Corporation (e.g. checks, promissory notes) with a value of less than US \$5,000 shall be signed by the Executive Director or Treasurer; if the value is over US \$5,000, signatures of two or more authorized individuals are required. (11.2)
- **Deposits:** All funds of the Corporation shall be deposited in banks or other depositories as the Board of Directors selects. (11.3)

#### **MAINTENANCE OF CORPORATION RECORDS**

- The Corporation will keep all required records at its principal office or at another place determined by the Board of Directors. (12)

#### **IRC 501(C)(6) TAX EXEMPTIONS**

- **Limitation on Activities:** The Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986. (13.1)
- **Prohibition Against Private Inurement:** No part of the net earnings of the Corporation shall inure to the benefit or be distributable to its Members, Directors, officers, or other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation. (13.2)

#### **AMENDMENT OF BYLAWS**

- The Bylaws shall only be altered, amended, or repealed, and new Bylaws adopted, upon the affirmative vote of two-thirds of all Directors and the subsequent approval of the Statutory Member. The Statutory Member shall have the unilateral right to amend these Bylaws and cause new Bylaws to be adopted to remove itself as the Statutory Member of the Corporation. (14)

#### **CONSTRUCTION AND TERMS**

- **Conflict:** If there is any conflict between the Bylaws and the Articles of Organization of the Corporation, the Articles of Organization shall govern. (15.1)
- **Unenforceability:** Should any of the provisions of the Bylaws be held invalid, the remaining provisions will be unaffected. (15.2)
- **Written Notice:** References to written notice include notification via email. (15.3)



- **References:** References to the Articles of Organization refer to the Articles of Organization filed with the Secretary of the Commonwealth of Massachusetts used to establish the legal existence of the Corporation. (15.4)

#### **PUBLICITY**

- Neither a Member nor the Corporation may make a public announcement regarding activities related to the Corporation that names the identities of any other Member unless prior written consent is received from any Member named. All Members consent to the Corporation listing the Member's name and logo on the Corporation's website and in press or other public collateral regarding memberships in the Corporation. (16)

#### **NONLIABILITY OF MEMBERS, DIRECTORS, AND OFFICERS**

- The Members, Directors, and officers of the Corporation shall not be personally liable for any debt, liability or obligation of the Corporation. (17)